



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, FF, MNDC, MNR, MNSD, OPR

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

Tenant's application

First of all it is my decision that I will not deal with all the issues that the applicant has put on this application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel a Notice to End Tenancy, and the request for recovery of the filing fee and I dismiss the remaining claims with liberty to re-apply.

Landlord's application

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, a request for a monetary order for \$3200.00, and a request for recovery of the \$50.00 filing fee.

Background and Evidence

The agent for the landlord testified that:

- The tenant failed to pay rent for the months of May 2011, June 2011, and July 2011, and therefore on July 19, 2011 they served the tenant with a 10 day Notice to End Tenancy for non-payment of rent.
- The tenant has subsequently paid rent for the months of July 2011, and August 2011, however the rent has been accepted for use and occupancy only.
- The May 2011 and June 2011 rent is still outstanding.

The tenant testified that:

- The May 2011 and June 2011 rent has been paid to the landlord.
- May 2011 rent was paid on May 1 2011 to the landlord in cash at the landlord's residence, with a witness present.
- June 2011 rent was paid on June 1 2011 to the landlord in cash at the landlord's residence, with a witness present.
- The landlord refused to sign receipts for the May 2011 or June 2011 rent, because he was upset that she was asking him to do repairs.
- She did initially withhold the July 2011 rent, however it was paid in full by money order on July 22, 2011.
- The August 2011 rent has also been paid in full by money order.

Witness for the tenant testified that:

- She was present with the tenant on May 1, 2011 when the tenant paid the landlord the May rent in cash at his place of residence.
- She was also present when the tenant paid the landlord the June rent in cash on June 1, 2011 at his place of residence.

Analysis

It is my finding that the landlords have not shown that there is any rent outstanding.

The agent for the landlord stated that the May 2011 and June 2011 rent has not been paid, however the tenant and the tenants witness testified that the full May 2011 and June 2011 rent was paid in cash to the landlord.

The landlord was not present to testify at today's hearing to verify or deny the tenant and witnesses claims, and therefore the landlords have not met the burden of proving that there is any rent outstanding.

I also question why the landlord would not have issued a Notice to End Tenancy in May 2011 or June 2011 if rent had not been paid.

Therefore it is my finding "on the balance of probabilities" that the rent for May 2011 and June 2011 has been paid in cash to the landlord.

Further since the July 2011 rent was paid within the five day grace period after the tenant received the Notice to End Tenancy, the Notice to End Tenancy is void and this tenancy continues.

Conclusion

Landlord's application

The landlord's application is dismissed in full without leave to reapply.

Tenant's application

The 10 day Notice to End Tenancy dated July 19, 2011 is hereby cancelled and this tenancy continues. I further order that the landlord bear the \$50.00 cost of the filing fee paid by the tenant, and therefore the tenant may make a one-time deduction of \$50.00 from future rent payable to the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 23, 2011.

Residential Tenancy Branch